

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

In the Matter of the PECFA Award Appeal of

Mr. John I. Scheffen
P.O. Box 236
Lena, WI 54139

Re: Lena Filling Station

FINAL DECISION

This is a request for review under §101.02(6)(e) to (i), Stats., of a decision of the Division of Safety and Buildings on a claim for reimbursement under §101.143, Stats., the Petroleum Environmental Cleanup Fund Act ("PECFA"). The parties have agreed that the review may be conducted on the basis of the Division's record and the telephone conference call of March 30, 1992.

Under the PECFA statute, the department is required to issue awards for the eligible costs associated with the cleanup of a petroleum products discharge from a petroleum product storage system. Mr. Scheffen filed a claim for \$20,857.30 in reimbursement for a site in Lena, Wisconsin, and the Division made payment in the amount of \$11,036.21. This amount reflected (among other adjustments) two deductions of \$5,000.00 each for two "occurrences" of petroleum product leakage at the site.

Mr. Scheffen contends that the assessment of a second \$5,000.00 deductible was unfair because one of the occurrences was very small and required no further cleanup after soil samples were taken and tested. However, the consultant's charges and the costs of obtaining and analyzing the samples for this occurrence were included in Mr. Scheffen's claim.¹

¹ The information in the records does not show what amount of costs may be allocated to the smaller occurrence. If this amount is less than \$5,000.00, Mr. Scheffen is being affected unfairly by the second deductible and his claim should be recalculated to omit both the expenses for the smaller occurrence and the second deductible.

FINDINGS OF FACT

1. Although all of the cleanup activities associated with this claim took place at one site, there were two separate areas of petroleum product discharge involved.

2. The PECFA statute defines "occurrence" as "a contiguous contaminated area resulting from one or more petroleum products discharges," §101.143(l)(cs).

3. The PECFA statute provides:

"The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds a deductible amount of \$5,000. An award issued under this paragraph may not exceed the following for each occurrence: if §101.143(4)(d)2, Stats.

4. The Division has consistently taken the position that a deductible is to be assessed for each occurrence at a site.

CONCLUSIONS OF LAW

1. The Division's consistent interpretation of §101.143(4)(d), Stats., as requiring the assessment of a \$5,000.00 deductible for each occurrence at a site is a reasonable reading of the statute.

2. The Division was correct in assessing two deductibles in the calculating the reimbursement of the claim for the Scheffen site in Lena.

OPINION

The Division's interpretation is reasonable because it fits the pattern of the rest of §101.143(4)(d) in establishing limits on the amounts of awards per occurrence. It would not be logical to apply the other limits specified in the statute to each occurrence while applying the deductible only once to a claim that might include one, two or more occurrences.

Having concluded that the application of the deductible to each occurrence is reasonable, there is no basis in the statute to distinguish between large and small occurrences. Although one of the

occurrences at the Scheffen site was small enough to require no special cleanup procedures, it was large enough to require soil samples and testing, for which reimbursement was claimed.

As noted in the footnote on page 2, Mr. Scheffen's award should be recalculated if he can provide information showing that the costs attributable to the smaller occurrence were less than \$ 5,000.00 .

ORDER

The Division's decision on reimbursement is affirmed.

Dated at Madison, Wisconsin this 10th day of November, 1992.

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